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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JUNE STOUGH et al.,

Plaintiffs, Cross-Defendants, and
Respondents,

v.

ROBERT KLURE,

Defendant, Cross-Complainant and
Appellant.

H034000

(Santa Clara County
Super. Ct. No. CV086862)

Appellant Robert Klure appeals from an order directing him to pay monetary sanctions totaling \$3,587.00 to respondents. Respondent J.P. Morgan Chase Bank, N.A. requests that we dismiss the appeal as taken from a nonappealable order.¹ Finding that the sanctions order at issue herein is not an appealable order, we will dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

After appellant refused to submit to questioning under oath on January 12, 2008, the date originally noticed for his deposition, respondents moved for terminating, evidence, issue and monetary sanctions. All requests for monetary sanctions were based on actual costs of the aborted deposition. On February 27, 2009, the trial court granted the motion in

¹ In her brief, respondent June Stough addresses appellant's contentions on the merits and requests sanctions on appeal. Sanctions are hereby denied.

part. The court declined to issue terminating, issue or evidentiary sanctions, but ordered appellant to pay monetary sanctions as follows: \$1,250 to respondent Stough; \$637 to respondent Washington Mutual Bank; \$850 to Lawyers Title Company; and \$850 to Integrity Mortgage Group. This timely appeal ensued.

DISCUSSION

The Trial Court Did Not Lack Jurisdiction to Enter the Sanctions Order

As a preliminary matter, appellant contends that the trial court was without jurisdiction to issue the monetary sanctions order on February 27, 2009, because he had perfected an appeal from the order denying summary judgment on February 23, 2009.² Code of Civil Procedure section 916 sets forth the rule regarding the stay of trial court proceedings after the perfection of an appeal. It provides, in relevant part, that, “the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order” appealed from. (Code of Civ. Pro. §916, subd. (a).) Contrary to appellant’s argument, the filing of his notice of appeal from the order denying summary judgment did not deprive the trial court of jurisdiction to issue the subject sanctions order because the issue of discovery abuse was collateral to the order appealed from.

Whether a matter is “embraced” or “affected” within the meaning of section 916 depends on whether the matter would affect the “effectiveness of the appeal.” (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 190-191.) A “postorder proceeding is ... ancillary or collateral to the appeal despite its potential effect on the appeal, if the proceeding could or would have occurred regardless of the outcome of the

² See this court’s opinion filed concurrently in H033911 wherein we dismiss the appeal from the order denying the motion for summary judgment as taken from a nonappealable order.

appeal.’ [Citation.]” (*Gridley v. Gridley* (2008) 166 Cal.App.4th 1562, 1587 citing to *Varian Medical Systems, Inc. v. Delfino, supra*, 35 Cal.4th 180, 191.) The award of sanctions here was based on actual attorney fees and costs incurred because of appellant’s *prior* discovery abuse. The sanctions award was, thus, a collateral matter because defendant could have been sanctioned for that abuse, despite the outcome of the appeal on the summary judgment order. (*Day v. Collingwood* (2006) 144 Cal.App.4th 1116, 1124-1125.) Therefore, the trial court was not deprived of jurisdiction to enter the order despite the pending appeal. (See *Bankes v. Lucas* (1992) 9 Cal.App.4th 365, 369; see also: *Wisely v. Superior Court (People)* (1985) 175 Cal.App.3d 267.)

The Appeal is Taken From a Nonappealable Order

Whether or not the trial court lacked jurisdiction to enter the underlying sanctions order, the right to appeal is wholly statutory. (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 108.) Code of Civil Procedure section 904.1 enumerates the orders and judgments of the superior court from which an appeal may be taken. Subdivision (a)(12) provides that an appeal may be taken from an order directing payment of monetary sanctions *exceeding* \$5,000. Here the discovery sanctions order is well below \$5,000. Such an order is not separately appealable, but “may be reviewed on appeal . . . after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.” (Code of Civ. Pro. § 904.1, subd. (b); see *Hanna v. BankAmerica Business Credit, Inc.* (1993) 16 Cal.App.4th 913, 915.) Because appellant has not filed either a petition for extraordinary writ, or an appeal from a final judgment, the order awarding monetary sanctions of less than \$5,000 is not an appealable order and the appeal therefrom must be dismissed.

DISPOSITION

The appeal is dismissed as taken from a nonappealable order.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.